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COMPTROLLER GENERAL OF THE UNITED STATES
Washington 25

B-106864

February 1, 1952

The Honorable
The Secretary of State

My dear Mr. Secretary:

Reference is made to your letter of December 6, 1951, relative to section 901 of the Merchant Marine Act of 1936, 49 Stat. 2015, in which you refer in detail to the effect of that restrictive legislation upon the operations of the Department of State and request decisions upon specific questions with the objective of establishing certain general policy guide lines which may be used as a basis for the issuance of departmental and Foreign Service regulations governing the use of foreign vessels. In that regard you state that the procedure recommended by Office decisions of April 15, 1931, and September 24, 1932, A-36054 and A-44574, respectively, namely, that of referring for advance decision cases involving the possible use of foreign vessels, no longer is feasible.

While it would seem that the numerous decisions rendered by this Office to the Department of State in the past with respect to the application of the provisions of the said section to the use of foreign vessels would serve generally as norms for the issuance of regulations it may be that changed conditions resulting from expanded international activity by the Government would warrant reconsideration of some of the earlier rulings.

Section 901 of the Merchant Marine Act of 1936, provides as follows:

"Any officer or employee of the United States traveling on official business overseas or to and from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor."

Under the language of the proviso, the Congress has mandatorily rendered each case of travel aboard a vessel of foreign registry subject to review by the Comptroller General, and I am sure you will understand that it will be difficult if not impossible under the circumstances to give categorical or unqualified answers to the questions contained in your letter. However, subject to the qualification mentioned and with the clear understanding that--particularly in view of the many generalities here involved--appropriate audit

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action on vouchers covering the subject shipments will not be in any way restricted as a result of the answers herein contained, such questions are stated and, so far as practicable, answered in the order presented.

"1. When the official necessity of an employee's mission requires the use of a ship under a foreign flag, must his dependents wait until an American vessel is available, or may they accompany the employee."

The right of transportation does not accrue to dependents as such but to the employee concerned, and dependents' entitlement to transportation upon foreign vessels may be regarded as being determined by the employee's entitlement thereto. Accordingly, when the necessity of an employee's mission requires the use of a foreign vessel his dependents may accompany him on such vessel.

"2. If an American flag ship is not available from the usually traveled port, is it necessary for the employee and his dependents to journey to the nearest port where they may board an American vessel, involving considerable extra expense and waste of time, or may they utilize a foreign vessel by the usually traveled route. For example, when travel out of England cannot be obtained on an American vessel at the usually traveled port at Southampton, may expenses be paid for travel to Marseille or Cannes, France, or Genoa or Naples, Italy, where American flag service is available, or may travel be performed on a foreign vessel direct from Southampton to the authorized destination."

In view of the purpose of section 901, economy alone generally may not be relied upon as a basis for using foreign vessels. However, where a routing designed to utilize an American vessel involves considerable land travel or transportation on a foreign vessel for a part of the journey with a consequent transshipment to an American vessel at excessive extra cost and delay, foreign vessels furnishing direct transportation between the port of origin of the travel and the port of destination generally may be used. In the example set forth in the question, assuming that American vessels are not available at other ports in Great Britain and that the indirect routing would result in excessive extra cost and delay, travel may be performed by a foreign vessel from Southampton to the United States.

"3. No American flag vessels call at ports in Portugal or the Scandinavian countries, but there is adequate service offered by foreign flag carriers directly to and from ports in these countries. Must personnel travel and have their household and personal effects transported overland or via a circuitous route to the nearest port at which American flag service is available, or may direct foreign flag service be used."

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Under the circumstances stated, direct foreign flag service may be used, assuming the conditions set out in answer to question 2 are met.

"4. There are some instances where no American flag service is operated and others where the service is somewhat intermittent. Would a traveler be required to use a foreign flag vessel to the nearest port at which an American flag vessel could be utilized for the remainder of the journey to final destination. For instance (a), there is no American passenger service available from Dakar to the United States, but foreign flag service is available to southern France where passengers could continue their journey to New York by the American Export Line vessels; (b), from India, as previously mentioned, the only American flag passenger service is that of the American President Line, which is intermittent. Could personnel travel via foreign flag vessels from Indian ports to Alexandria or Italian ports and then continue their journey to the United States via American flag steamers; (c), in cases where there is no American passenger service available, would the Department be justified in using foreign flag service at less cost, rather than transshipment as mentioned in (a) and (b); (d), if your reply to (a), (b), and (c) is in the affirmative, would it apply to dependents and effects as well as employees, regardless of whether the travel is incident to transfer, resignation, separation, or leave."

(a) Assuming that foreign flag service is available on a more direct route from Dakar to the United States and that the alternative routing, requiring transshipment to vessels of the American Export Lines in southern France, would involve excessive extra cost and delay, it may be considered that American vessels are not available within the meaning of section 901.

(b) If the transportation is not reasonably available aboard the ships of the American President Line at the time travel is required to be performed, foreign vessels may be utilized from Indian ports to Alexandria or to Italian ports with transshipment to American vessels at those points.

(c) In the absence of specific information as to the extra costs and delay of the routing, involving transshipment to American vessels, over that of direct transportation in foreign vessels the questions cannot be answered. However, with respect to travel from Dakar, your attention is invited to the reply to 4(a), above.

(d) The question, under the circumstances stated in the third paragraph hereof, is not susceptible of a categorical answer which necessarily would depend upon the facts in each case.

"5. Pending clarification from the Comptroller General, the Department has instructed the Office of the United States High Commissioner for Germany to route all travel to the United States via the port of Bremerhaven on the AMERICA. Between now and June

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30, 1952, several hundred HICOG employees will be terminated, and if sailings are limited to the AMERICA individuals must be held in Germany beyond the dates it is desired to separate them at excessive salary cost, which the Department's budget will not stand. May the Department inform HICOG that when accommodations are not available on the AMERICA, or when such sailing will unduly delay departure, they are authorized to route employees and their dependents to an Italian port where they can continue their journey to the United States via an American Export Line vessel, or they may be routed via direct foreign vessels."

If accommodations aboard the S.S. America are not in fact available at the port of Bremerhaven, employees and their dependents should be routed by rail to Italian ports and thence by American vessels to the United States, it being understood that the additional cost and delay of such routing is not excessive.

"6. The Consulate General at Bremen is holding large shipments of effects destined for India which can be shipped directly from Bremerhaven on foreign vessels. The Department has been informed that if such shipments must be made by American vessels, the freight costs and handling via train to Naples will more than double the costs. In such circumstances may the Department authorize the Consulate General to ship household and personal effects direct on foreign vessels."

Generally, the question is answered in the affirmative.

It is stated in your letter as follows:

"The Consulate General at Bremen asked the Department whether they would be permitted to use foreign flag vessels for the direct shipment of effects (1) in the case of shipments destined to the West Coast of the United States, (2) effects destined to the Far East, and (3) effects destined to the Near East. The Department informed the Consulate General that pending decisions from the Comptroller General shipments to the West Coast of the United States and to the Far East should be on American flag vessels to New York where transshipment overland and to American ships would be handled by the United States Despatch Agent. They were advised that shipments to Turkey, the Near East and Indian ports should be routed overland to Italy and thence to American flag ships. The Department has now received another communication from the Consulate General in which it is stated that they assume the Department is aware that compliance with its instructions will mean that freight and handling carriers will increase costs of moving effects by some 50 to 100 per cent, but that the instructions will be adhered to unless otherwise instructed. They point out that the rates between Bremen and the West Coast of the United States are identical to those to New York; that the rates between Bremen and the Far East compare to those to New York; that rail and handling charges to Italy for shipments to the Near East and Indian ports will be over and above ocean freight

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charges. The Department does not know what reply to make to the Consulate General at Bremen, or to other posts where similar shipping conditions exist, but in view of the apparent excessive costs and longer period of transit involved it is hoped that you can hold that American flag vessels are not available for such shipments."

With respect to shipments of effects from Bremen, you are advised that upon the basis of the information submitted in your letter the use of foreign vessels to the stated points appears proper. That part of the question pertaining to "other posts where similar shipping conditions exist" is too general to permit of an appropriate reply.

"7. Pursuant to section 942(a) of the Foreign Service Act of 1946, the Department has prescribed section 103.607(r) to the Foreign Service Regulations to cover transportation of officers and employees of the Service to approved hospitals 'by such means and under such conditions as may be specified in the travel authorization.' Will such travel be subject to the provisions of section 901 of the Merchant Marine Act of 1936. While travel at Government expense to approved hospitals is limited to officers and employees of the Service, the Department has issued Foreign Service Personnel Circular No. 66, dated February 15, 1951, which permits the return of dependents to the United States at Government expense prior to the eligibility of the principal in extreme hardship cases involving physical, mental, and emotional health. In such emergency cases may travel be performed by foreign flag vessels where the use of an American flag vessel would require indirect travel or a delayed departure."

While the transportation of officers and employees to approved hospitals is subject to section 901 of the Merchant Marine Act of 1936, such travel is of an emergent nature and ships of foreign registry may be used if required by the exigencies. The second part of the question is similarly answered.

"8. In accordance with the provisions of section 911 of the Foreign Service Act of 1946, may the Department prescribe a Foreign Service Travel Regulation which would permit officers and employees of the Service and their dependents to use a combination of air and surface transportation on either one-way or round-trip journeys, even though such travel results in higher transportation costs? For example, on a one-way journey from Singapore to the United States, perform travel by air from Singapore to Marseille or Genoa and then board an American vessel for surface travel to New York. Or, in the case of a round-trip journey, purchase a round-trip air ticket for a portion of the trip and perform the remainder of the journey by surface. It is realized that travelers cannot be forced to travel by air, but it is believed many of them would not object to using such means of transportation for a portion of their journey if they were permitted to travel by steamer for a part of the trip, and if a regulation permitting such travel could be prescribed it would help the Department in achieving better personnel utilization by expediting an employee's arrival at his destination."

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The question is answered in the affirmative. ✓

It is obvious from the foregoing that no hard and fast rules may be formulated for the numerous possible situations that arise in world travel by officers and employees of the Department and of the Foreign Service. However, having in mind the primary purpose of section 901 of the Merchant Marine Act of 1936, mere inconvenience to the traveler, reasonable delays and minor economies are not factors which normally would justify an officer or employee in preferring foreign vessels over those operating under the American flag.

It is recommended that specific cases involving any doubt as to the propriety of the use of foreign vessels continue to be submitted to this Office pending further clarification of the matter.

Sincerely yours,

(Signed) LINDSAY C. WARREN

Comptroller General
of the United States

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*After all have seen
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